

Department of the Navy

5231.205-90

been established by adequate price competition are:

(i) Contracts for items for which there are a limited number of sources and the prices at which award will be made are within a reasonable amount of each other and compare favorably with independent Government estimates and with prior prices paid;

(ii) Any contract, including cost-type contracts, when cost is a significant evaluation factor; and

(iii) Contracts for which there are dual sources.

PART 5231—CONTRACT COST PRINCIPLES AND PROCEDURES

Subpart 5231.2—Contracts with Commercial Organizations

Sec.

5231.205 Selected costs.

5231.205-90 Shipbuilding capability preservation agreements.

AUTHORITY: 5 U.S.C. 301, 10 U.S.C. 2501, 10 U.S.C. 7315, DoD Directive 5000.35.

SOURCE: 62 FR 66827, Dec. 22, 1997, unless otherwise noted.

Subpart 5231.2—Contracts With Commercial Organizations

5231.205 Selected costs.

5231.205-90 Shipbuilding capability preservation agreements.

(a) *Scope and authority.* Where it would facilitate the achievement of the policy objectives set forth in 10 U.S.C. 2501(b), the Navy may enter into a shipbuilding capability preservation agreement with a contractor. As authorized by section 1027 of the National Defense Authorization Act for Fiscal Year 1998 (Public Law 105-85), such an agreement permits the contractor to claim certain indirect costs attributable to its private sector work as allowable costs on Navy shipbuilding contracts.

(b) *Definition. Incremental indirect cost*, as used in this subsection, means an additional indirect cost that results from performing private sector work described in a shipbuilding capability preservation agreement.

(c) *Purpose and guidelines.* The purpose of a shipbuilding capability preservation agreement is to broaden and

strengthen the shipbuilding industrial base by providing an incentive for a shipbuilder to obtain new private sector work, thereby reducing the Navy's cost of doing business. The Navy will use the following guidelines to evaluate requests for shipbuilding capability preservation agreements:

(1) The Assistant Secretary of the Navy for Research, Development and Acquisition must make a determination that an agreement would facilitate the achievement of the policy objectives set forth in 10 U.S.C. 2501(b). The primary consideration in making this determination is whether an agreement would promote future growth in the amount of private sector work that a shipbuilder is able to obtain.

(2) An agreement generally will be considered only for a shipbuilder with little or no private sector work.

(3) The agreement shall apply to prospective private sector work only, and shall not extend beyond 5 years.

(4) The agreement must project an overall benefit to the Navy, including net savings. This would be achieved by demonstrating that private sector work will absorb costs that otherwise would be absorbed by the Navy.

(d) *Cost-reimbursement rules.* If the Navy enters into a shipbuilding capability preservation agreement with a contractor, the following cost-reimbursement rules apply:

(1) The agreement shall require the contractor to allocate the following costs to private sector work:

(i) The direct costs attributable to the private sector work;

(ii) The incremental indirect costs attributable to the private sector work; and

(iii) The non-incremental indirect costs to the extent that the revenue attributable to the private sector work exceeds the sum of the costs specified in paragraphs (d)(1)(i) and (d)(1)(ii) of this subsection.

(2) The agreement shall require that the sum of the costs specified in paragraphs (d)(1)(ii) and (d)(1)(iii) of this subsection not exceed the amount of indirect costs that would have been allocated to the private sector work in accordance with the contractor's established accounting practices.

(3) The Navy may agree to modify the amount calculated in accordance with paragraph (d)(1) of this subsection if it determines that a modification is appropriate to the particular situation. In so doing, the Navy may agree to the allocation of a smaller or larger portion of the amount calculated in accordance with paragraph (d)(1) of this subsection, to private sector work.

(i) Any smaller amount shall not be less than the sum of the costs specified in paragraphs (d)(1)(i) and (d)(1)(ii) of this subsection.

(ii) Any larger amount shall not exceed the sum of the costs specified in paragraph (d)(1)(i) of this subsection and the amount of indirect costs that would have been allocated to the private sector work in accordance with the contractor's established accounting practices.

(iii) In determining whether such a modification is appropriate, the Navy will consider factors such as the impact of pre-existing firm-fixed-price Navy contracts on the amount of costs that would be reimbursed by the Navy, the impact of pre-existing private sector work on the cost benefit that would be received by the contractor, and the extent to which allocating a smaller or larger portion of costs to private sector work would provide a sufficient incentive for the contractor to obtain additional private sector work.

(e) *Procedure.* A contractor may submit a request for a shipbuilding capability preservation agreement, together with appropriate justification, through the Deputy Assistant Secretary of the Navy for Ships, to the Assistant Secretary of the Navy for Research, Development and Acquisition, who has approval or disapproval authority. The contractor should also provide an informational copy of any such request to the cognizant administrative contracting officer.

PART 5242—CONTRACT ADMINISTRATION

AUTHORITY: 5 U.S.C. 301, 10 U.S.C. 2202, DOD Directive 5000.35

Subpart 5242.90—Refunds Requirements (Spare and Support Equipment)

5242.9000 Requests for refunds.

(a) *Policy.* (1) This subpart establishes uniform policy and procedures on requesting refunds for spare parts or items of support equipment. This policy is not intended to diminish the responsibility of Navy contracting personnel to properly price spare parts and items of support equipment. Further, it is not intended to serve as a mechanism for the recovery of excess profits.

(2) In accordance with the guidance set forth in paragraph (c) of this section, contracting activities shall request a refund whenever the contract price of any spare part or item of support equipment significantly exceeds the item's intrinsic value as defined in the clause at 5252.242-9000. Refunds shall be requested only for the difference between the intrinsic value of the item at the time an agreement on price was reached and the contract price. Refunds will not be requested to recoup the amount of cost decreases that occur over time due to productivity gains (beyond economic quantity considerations) or changes in market conditions.

(b) *Examples.* The following are examples of circumstances which may establish a basis for a refund request or pricing adjustment:

(1) A technical or engineering analysis results in a determination that the intrinsic value is significantly lower than the historical price.

(2) The price paid for an item bought competitively in similar quantity and circumstances (e.g., urgency, delivery terms) is significantly less than the former sole source price.

(3) Prices paid to the manufacturer of an item indicate the amount previously charged by the prime contractor for the item significantly exceeded the intrinsic value of the prime contractor's efforts in providing the item.

(c) *Solicitation provisions.* The contracting officer shall insert the clause at 5252.242-9000 in solicitations, Basic Ordering Agreements, and contracts (as defined in FAR 2.101) which contain